

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

6/6/2019 12:20 pm

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

1 AJAY BAHL,

2 *Plaintiff,*

3 v.

4 NEW YORK COLLEGE OF OSTEOPATHIC  
5 MEDICINE OF NEW YORK INSTITUTE OF  
6 TECHNOLOGY et al,

*Defendants.*

Docket 14-cv-04020-LDW-AKT

United States Courthouse  
Central Islip, New York

November 28, 2017  
11:52:46 am - 12:08:40 pm

7 TRANSCRIPT FOR CIVIL CAUSE  
8 - STATUS CONFERENCE -  
9 BEFORE THE HONORABLE A. KATHLEEN TOMLINSON  
UNITED STATES MAGISTRATE-JUDGE

10 A P P E A R A N C E S :

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*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 2

1 COURTROOM DEPUTY: Calling civil case 14-4020, Bahl v.  
2 New York College of Osteopathic Medicine of New York Institute  
3 of Technology et al. Please state your appearance for the  
4 record.

5 MR. PETERS: Yes. Noah Barnett Peters, for the  
6 plaintiff, Ajay Bahl.

7 THE COURT: Good morning.

8 MR. PETERS: Good morning.

9 MS. MUNSKY: Stephanie Munsky, of Clifton Budd &  
10 DeMaria, for the Defendant, New York Institute of Technology,  
11 named herein as New York College of Osteopathic Medicine of New  
12 York Institute of Technology. Good morning, Your Honor.

13 THE COURT: Good morning. I heard some brief passage  
14 about why Mr. Catalano is not here. Stay seated, if you would.  
15 I need you on the microphone. What's the story?

16 MS. MUNSKY: Yes, Your Honor. Doug is at an NLRB  
17 hearing, and it unexpectantly, it continued till today. I found  
18 out about it after hours. I had to actually leave here about  
19 8:45, so timing wise, I think it would have been too difficult  
20 to seek an adjournment.

21 THE COURT: You'd be surprise how late we take  
22 requests for adjournments, especially, when lead counsel is  
23 involved. I guess my concern is, are you thoroughly familiar  
24 with the case at this point?

25 MR. PETERS: Yes, Your Honor. To the extent that we

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 3

1 may have to ask questions to a client, you know, it would be the  
2 same as to whether Doug would be here or myself.

3 THE COURT: All right. Well, when we left off with  
4 this case basically, I set this conference on two counts. One,  
5 because new counsel for the plaintiff requested it, and also, to  
6 deal with some of the unanswered, or I should say, unaddressed  
7 issues involving the status of the case. I know that Mr. Bahl  
8 has filed an appeal in the Second Circuit. There was a question  
9 as to whether or not this Court would continue with the case  
10 while the appeal was pending. The real issue becomes, under the  
11 rules of the Court both here and the Second Circuit, whether or  
12 not this appeal deprives this Court of jurisdiction to continue  
13 the case. And I have looked at this issue and I would draw your  
14 attention specifically to a Supreme Court case called Lauro  
15 Lines v. Chasser, 490 U.S. 495 (1989), in which the Court held  
16 that an interlocutory order denying a defendant's motion to  
17 dismiss a damages action on the basis of a contractual forum-  
18 selection clause is not immediately appealable under § 1291.

19 Now, I don't know what was explained to the Second  
20 Circuit as to the basis, the specific basis for the appeal, but  
21 I read this at this point, that I am deprived of jurisdiction  
22 with respect to the case continuing as to the non-appealable  
23 issues that exist in this case. You are certainly free to  
24 address that if you wish. But that also brings me then to part  
25 two of this discussion in which I had a request previously to

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 4

1 stay these proceedings in light of the motion to transfer venue  
2 with respect to the licensing authority. And I'm not even sure  
3 I remember now which state it is. But in any event, having  
4 granted that, the question is, at least the request was made  
5 about pursuing a motion to stay these proceedings until the  
6 other proceeding is decided by that Court.

7 I'm not making any decision on that today. Certainly,  
8 the question here is, where we're going from here. And on two  
9 counts, I think, Mr. Peters, I'd like to have some word from you  
10 as to what the intentions are with respect to the Second Circuit  
11 appeal. And then if the defendants are still in a position  
12 where they're pressing to make a motion for a stay, then we'll  
13 talk about a briefing schedule for that. All right?

14 MS. MUNSKY: All right.

15 THE COURT: Mr. Peters?

16 MR. PETERS: Yes. We've spoken to Mr. Bahl about  
17 this. The appeal has been filed and pursued pro se. Mr. Bahl  
18 is adamant that he does not wish to drop the appeal, so our  
19 expectation is that the appeal will go forward.

20 THE COURT: Again, because I haven't seen any  
21 substance of the appeal, I take it, there's no briefing done  
22 yet, correct?

23 MR. PETERS: That's right.

24 THE COURT: All right. And so, you have what, six  
25 months to perfect the appeal?

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 5

1 MR. PETERS: I don't know the details. The appeal is  
2 something that Mr. Bahl is pursuing on his own.

3 THE COURT: Okay. Have you had a chance to talk to  
4 him? I'm just trying to get at the root of what's the basis;  
5 what are the actual bases for the appeal itself.

6 MR. PETERS: Well, you cited authority just now that  
7 would indicate that this is not a proper interlocutory appeal,  
8 and that this is something that should be pursued at the end of  
9 the case, if at all, right?

10 THE COURT: Correct.

11 MR. PETERS: And based on what you've just said, that  
12 would seem to be persuasive precedent, that you can drop the  
13 appeal, and once this case is over, you can pursue whatever  
14 issues you would have in that appeal at the end of the case.  
15 Instead of taking the extraordinary step of filing an  
16 interlocutory appeal. Those are matters that we've discussed  
17 with Mr. Bahl. And perhaps, I think after this, we'll discuss  
18 it some more with him.

19 THE COURT: All right. Bear with me for a minute.  
20 (Pause.) And maybe this will help some of the discussion on the  
21 issue of the appeal, the interlocutory appeal. That Lauro Lines  
22 case, let me just give you a little bit of the additional  
23 language that's here. I mentioned to you before, it says, "An  
24 interlocutory order denying a defendant's motion to dismiss a  
25 damages action on the basis of a contractual forum-selection

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 6

1 clause", which is the case here, "is not immediately appealable  
2 under § 1291." "Such an order is not final in the usual sense,  
3 for it does not end the litigation on the merits but, on the  
4 contrary, ensures that the litigation will continue. Nor does  
5 the order fall within the narrow exception," and I emphasize the  
6 word "narrow"; "narrow exception to the normal application of  
7 the final judgment rule known as the collateral order doctrine,  
8 for the order is not effectively unreviewable on appeal from  
9 final judgment. The right to be sued only in a particular  
10 forum, as compared to the right to avoid suit altogether,  
11 although not perfectly secured by an appeal after final  
12 judgment, is sufficiently vindicable," which I'm not even sure  
13 where they came up with that word. Judge Scalia repeats it in  
14 his concurrence. But in any event, this "is sufficiently  
15 vindicable at that stage, and is not essentially destroyed if  
16 vindication is postponed until trial is completed."

17           And so, as I said, in this instance, because of a  
18 forum-selection clause, the decision in the district court in  
19 which the affected party here attempted to file an interlocutory  
20 appeal, at the appellate stage, the first appellate stage, the  
21 appeal was dismissed for that very reason. And the Petitioner  
22 appealed to the Supreme Court, and the Supreme Court upheld the  
23 appellate court, saying, no, you can't bring this at this point  
24 in time. It doesn't impact the merits of the case, and you can  
25 certainly bring it at the conclusion of the district court case.

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 7

1           So, we're pretty much in the same circumstances here,  
2           as far as I read the law and the caselaw. But again, I will  
3           leave that further discussion to you and your client.

4           MR. PETERS: Sure.

5           THE COURT: All right. So, that brings me back to the  
6           issue of where we're going from here. Since my view is, this  
7           Court is not bereft of jurisdiction. So, we will continue. But  
8           that brings me to the issue then of the request by the  
9           defendants to move forward with a motion to stay the proceedings  
10          here, pending the proceedings with the other entity in the court  
11          in --

12          MS. MUNSKY: Indiana, Your Honor.

13          THE COURT: -- Indiana. I kept thinking it's either  
14          Ohio or Indiana; I don't remember which one. All right. Is it  
15          still your intention you want to move in that direction?

16          MS. MUNSKY: Yes, Your Honor.

17          THE COURT: All right. I'd like to get this issue  
18          resolved pretty quickly. And, truly, I had no intention of  
19          having you do full formal federal rules briefing here. My  
20          thought process was to allow you to file a letter motion, not to  
21          exceed six pages, to tell me why I should put a hold on what's  
22          going on here, pending the other court's decision. And you  
23          don't need to repeat the facts here. We've been through the  
24          facts for quite a long time in this case. I'd like you to focus  
25          on the law. And once that's submitted, then I would give the

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 8

1 plaintiff two weeks to file any opposition, again, limited to  
2 six pages. Is that acceptable?

3 MS. MUNSKY: Yes, Your Honor.

4 MR. PETERS: Yes, it is. I do want to re-emphasize,  
5 based on your remarks today, we are going to have a discussion  
6 about the appeal and what we're going to do about that. And if  
7 we're convinced, based on the authority, that there's no chance  
8 of succeeding on that appeal, I think there is a possibility  
9 that we would withdraw it. So, it's not set in stone that we're  
10 going to continue with that, especially in light of Your Honor's  
11 comments today.

12 THE COURT: All right. That's fine.

13 MS. MUNSKY: Your Honor?

14 THE COURT: Yes?

15 MS. MUNSKY: I noted the timing for plaintiff to  
16 oppose. I didn't see how long you provided us to make the  
17 motion.

18 THE COURT: We're going to talk about that right now.

19 MS. MUNSKY: Okay. Thank you, Your Honor.

20 THE COURT: So, today is, let's see, we're at November  
21 28. It would be my sense of this, to give you two weeks, then  
22 give them two weeks, which would put you at December 12, it  
23 looks like, which is going to crash us right into the holiday  
24 season here. So, bear with me for a minute. (Pause.)

25 Well, let me propose this, again, because I do want to



*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 9

1 get this resolved as soon as possible. However, I'm not looking  
2 to make counsel's life, on either side here, miserable either.  
3 So, the question is whether or not you think you can get your  
4 papers in by December 8, and then, I would have counsel file his  
5 opposition by the 22<sup>nd</sup>. Or do we want to put the date over into  
6 the first part of January?

7 MS. MUNSKY: My preference, Your Honor, would be the  
8 first part of January because I have another motion due that  
9 day.

10 THE COURT: All right. Counsel?

11 MR. PETERS: Do you mean for their reply brief,  
12 putting that into January?

13 THE COURT: Well, there's no reply on letter motions.  
14 All right? So, it's their submission. I mean that's an awfully  
15 long time for a letter motion. I probably would have you submit  
16 in December at some point, but then give them the opportunity to  
17 file their reply after the holiday. All right?

18 MR. PETERS: The 22<sup>nd</sup> of December works on our end for  
19 a response. That date is fine.

20 THE COURT: All right. If that's the case, then I'll  
21 have you put yours in by the 8<sup>th</sup>. Okay? That's almost two full  
22 weeks, and on a letter motion, I normally wouldn't give the  
23 party that much time in the first instance, but you've got the  
24 rest of this week, and all of next week till Friday. Okay?  
25 Again, it's six pages, and I only want a discussion of the law.

*Bahl v. New York College of Osteopathic Medicine ... - 11/28/17* 10

1 All right?

2 MS. MUNSKY: Yes, Your Honor.

3 THE COURT: Okay. All right. So, December 8 and  
4 December 22. And I will get a decision out on this as quickly  
5 as possible. As I said, I want this particular issue to get  
6 resolved as quickly as possible, so we know where we're going  
7 here. All right? I think that's really as far as we can go  
8 today. Unless there's something else that you want to address  
9 while I have both sides here. Mr. Peters, let me start with  
10 you.

11 MR. PETERS: No, that sounds like a good course of  
12 action.

13 THE COURT: All right. And Ms. Minsky or Munsky?

14 MS. MUNSKY: Munsky.

15 THE COURT: Munsky. Excuse me. All right. Anything  
16 else you want to address today?

17 MS. MUNSKY: Nothing else, Your Honor.

18 THE COURT: All right. Very well, then. All right,  
19 so I'll wait for your papers. All right? In the meantime,  
20 whatever you're celebrating, have a wonderful holiday. All  
21 right?

22 - o0o -

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: May 26, 2019

  
Rochelle V. Grant

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